

JUL 31 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

JOHN M. NASSIF,)	No. 02-56315
)	
Plaintiff-Appellant,)	D.C. No. CV-01-00508-B(LAB)
)	
v.)	MEMORANDUM*
)	
DANIEL S. YACKER; BYCO)	
INSURANCE SERVICES, a)	
California partnership,)	
)	
Defendants-Appellees.)	
_____)	

Appeal from the United States District Court
for the Southern District of California
Rudi M. Brewster, District Judge, Presiding

Submitted July 11, 2003**
Pasadena, California

Before: KOZINSKI, FERNANDEZ, and RYMER, Circuit Judges.

John M. Nassif, M.D., appeals the district court's grant of summary judgment to Daniel Yacker and BYCO Insurance Services (hereafter collectively

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

Yacker). We affirm.

We agree with the district court that on the facts of this case the two year statute of limitations¹ did start to run when Provident Life and Accident Insurance Company refused to pay benefits to Nassif. See Smith v. SHN Consulting Eng'rs & Geologists, Inc., 89 Cal. App. 4th 638, 651-52, 107 Cal. Rptr. 2d 424, 434 (2001); Butcher v. Truck Ins. Exch., 77 Cal. App. 4th 1442, 1469-1470, 92 Cal. Rptr. 2d 521, 541 (2000); see also Jordache Enters., Inc. v. Brobeck, Phleger & Harrison, 18 Cal. 4th 739, 752-54, 958 P.2d 1062, 1071-73, 76 Cal. Rptr. 2d 749, 758-60 (1998).

We also agree that the running of the statute of limitations was not tolled. The wrong alleged against Yacker was not the same as the wrong alleged in the litigation with Provident. See Daviton v. Columbia/HCA Healthcare Corp., 241 F.3d 1131, 1141 (9th Cir. 2001) (en banc); Tannhauser v. Adams, 31 Cal. 2d 169, 177, 187 P.2d 716, 721 (1947); Aerojet Gen. Corp. v. Superior Court, 177 Cal. App. 3d 950, 956-57, 223 Cal. Rptr. 249, 253-54 (1986). Nor was Yacker given timely notice of Nassif's claim. See Daviton, 241 F.3d at 1140; Apple Valley Unified Sch. Dist. v. Vavrinek, Trine, Day & Co., 98 Cal. App. 4th 934, 954, 120

¹ See Cal. Civ. Proc. Code § 339(1); Budd v. Nixen, 6 Cal.3d 195, 203, 491 P.2d 433, 438, 98 Cal. Rptr. 849, 854 (1971); Alter v. Michael, 64 Cal. 2d 480, 481, 413 P.2d 153, 154, 50 Cal. Rptr. 553, 554 (1966).

Cal. Rptr. 2d 629, 644 (2002); Downs v. Dep't of Water & Power, 58 Cal. App. 4th 1093, 1100, 68 Cal. Rptr. 2d 590, 593 (1997). Nor can it be said that Yacker would not be prejudiced. See Structural Steel Fabricators, Inc. v. City of Orange, 40 Cal. App. 4th 459, 465, 46 Cal. Rptr. 2d 867, 870 (1995). Nor can it be said that Nassif's actions were reasonable or in good faith. See id.

AFFIRMED.